

## **Do I Have to Work on Sundays?**

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Some jobs require a person to work on the Sabbath. Does the law require you to work on your Sabbath, or does your employer have to accommodate your religious beliefs and let you go to church (or mosque or synagogue or temple)? As attorneys love to say, that depends. Two recent cases in late 2012 give some idea of how employers' and employees' rights are balanced in the context of time off for worship. Both cases are based on Title VII, which prohibits employers from discriminating based on religion (and includes all aspects of religious observance and practice)—unless the employer can demonstrate that it cannot reasonably accommodate the religious observance without undue hardship.

The first case is *Porter v. City of Chicago*, No. 11-2006 (7th Cir. Nov. 8, 2012). Porter worked in the Field Services Section of the Chicago Police Department. Originally, the FSS worked with Porter so she could have Sundays off for church. After an absence of nine months for pregnancy and medical leave, Porter was not assigned to the Sundays-off group, because of balance in the work force. She asked to be changed to Sundays-off, and was told that would happen when there was an opening in that group. She was also offered the option of working a late Sunday shift so she could go to church first. Porter started missing Sundays and was counseled for poor performance. Eventually, she quit, and sometime later she filed suit claiming discrimination based on religion.

At this stage, the court assumed that Porter had shown religious discrimination. The court decided that FSS had offered a reasonable accommodation. First, she could work a later shift on Sundays, and second, she could later be moved to the Sundays-off group when there was an opening. The Seventh Circuit agreed with the trial court that judgment should be granted for the employer.

The second case is *Equal Employment Opportunity Commission v. Thompson Contracting*, No. 11-1897 (4th Cir. Dec. 14, 2012). The EEOC filed this suit on behalf of Banayah Yisrael, on the grounds that Thompson did not accommodate his need for Saturday Sabbath observance. Thompson frequently had to run its dump trucks on Saturday to meet deadlines and make up for days lost due to bad weather. Thompson had 8 drivers with a commercial driver's license and sometimes needed to rent additional independent contractor dump trucks as well.

Yisrael missed several Saturdays when he was scheduled to work. All the other dump truck drivers worked on those days, and on two of the days, independent contractor dump trucks were hired as well. After the third time, Yisrael was fired. Again, the district court considered the reasonable accommodation issue. Yisrael had signaled he would not be happy in another position that was not as critical for weekend work. The court concluded that it would be a hardship for his employer to accommodate Yisrael. Operating a Thompson dump truck cost about \$100 a day, but an independent

contractor dump truck cost \$50-100 per hour. And if the dump truck did not run, Thompson lost revenue. Having substitute drivers would mean training more people. To accommodate Yisrael would mean either spending more money on an independent contractor or having Yisrael's fellow drivers work harder to make up for his absence. The district court concluded that was an undue hardship, and the Fourth Circuit agreed.

While the facts of each case are different, which creates employment for employment law attorneys, the general principle is that the employer should try to accommodate the employee. But if doing so causes financial loss to the company or hardship on other employees, it may not have to. The employee may have to accept a less than ideal situation. In Yisrael's place, he probably could have worked another general equipment job and given up the dump truck. In Porter's case, she probably could have worked a later shift on Sundays.

As a practical tip, try to be the kind of employee who wins favor. Yisrael had been fired once before for marijuana use, not a good thing for a heavy equipment driver. Porter had just taken 9 months off work. These facts don't affect the legal analysis, but may affect whether the company wants to try harder than the law requires to accommodate you.